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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/783,913	02/20/2004	Mitsuru Kuroda	14824A	7132
7590	11/02/2004		EXAMINER	
SCULLY, SCOTT, MURPHY & PRESSER 400 Garden City Plaza Garden City, NY 11530			FERGUSON, KEITH	
			ART UNIT	PAPER NUMBER
			2683	

DATE MAILED: 11/02/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/783,913	KURODA, MITSURU	
	<b>Examiner</b>	<b>Art Unit</b>	
	Keith T. Ferguson	2683	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM  
 THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) Responsive to communication(s) filed on 20 February 2004.
- 2a) This action is **FINAL**.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) Claim(s) 1-13 is/are pending in the application.
- 4a) Of the above claim(s) 6-13 is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-5 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | Paper No(s)/Mail Date. _____  |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>20041027</u> . | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
|   | 6) <input type="checkbox"/> Other: _____                                    |

**DETAILED ACTION**

***Claim Objections***

1. Claim 13 is objected to because of the following informalities: Claim 13, depends on cancelled claim 11. Appropriate correction is required.

***Double Patenting***

2. Claims 1-9 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-4 of U.S. Patent No. 6,725,070. Although the conflicting claims are not identical, they are not patentably distinct from each other because claims in the continuation are broader than the patent. For example, claim 1 of the present invention is the same as claim 6 of the patent except "a lower housing having a back surface of the portable radio device and a second lower end portion shaped to taper down towards the lower end of the portable radio device" limitation was not recited.

***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

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(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1 and 2 are rejected under 35 U.S.C. 102 (b) as being anticipated by Matsumoto.

The claimed invention reads on Matsumoto as follows:

Regarding claim 1, Matsumoto discloses a portable radio device (fig. 1b) allowing radio communication through an antenna (fig. 1b number 15), comprising: a housing (fig. 1 number 11) having a lower end portion shaped to locally protrude (fig. 1b number 11) and then taper down towards a lower end of the housing (fig. 1b number 18), wherein the antenna (fig. 1b number 15) is provided within the lower end portion (fig. 1b number 18).

Regarding claim 2, Matsumoto discloses the housing has a major surface (fig. 1a, i.e. where the pushbuttons "circles" are located), wherein the lower end portion protrudes from the major surface and tapers down towards the lower end of the housing (fig. 1a, i.e. the major surface tapers down at the line joint between numbers 13 and 14).

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***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

6. Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Matsumoto in view of Ying et al..

Regarding claim 3, Matsumoto discloses a portable radio

Device as discussed supra in claims 1 and 2 above. Matsumoto differs from claim 3 of the present invention in that it does not explicit disclose wherein a speaker and a microphone used for telephone conversation are provided on the major surface, wherein the microphone is provided on the major surface at a position higher than the lower end portion. Ying et al. teaches a mobile telephone comprising a speaker (fig. 1 number 18) and a microphone (fig. 1 number 24) used for telephone conversation are provided on the major surface (fig. 1), wherein the microphone (fig. 1 number 24) is provided on the major surface at a position higher than the lower end portion (fig. 1 number 14). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify portable radio device with a speaker and a microphone used for telephone conversation are provided on the major surface, wherein the microphone is provided on the major surface at a position higher than the lower end portion in order for the user of the portable radio device to be able to input speech signal and listen to speech signals when communicating with a distant party, as taught by Ying et al..

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7. Claims 4 and 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Matsumoto in view of Ying et al. as applied to claims 1-3 above and in further view of De Casillas.

Regarding claims 4 and 5, the combination of Matsumoto and de Casillas differs from claims 4 and 5 of the present invention in that they do not disclose a center portion of the lower end portion corresponding to the microphone is cut away to form a plane portion, and the plane portion is flush with the major surface provided with the microphone. De Casillas teaches a wireless telecommunication (fig. 1 number 1) device having a center portion (fig. 1 number 22) of the lower end portion corresponding to the microphone (fig. 1 number 22) is cut away to form a plane portion (i.e. a square portion) (fig. 1 number 22), and the plane portion (fig. 1 number 22) is flush with the major surface (fig. 1 number 12) provided with the microphone (fig. 1 number 22). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the combination of Matsumoto and de Casillas with a center portion of the lower end portion corresponding to the microphone is cut away to form a plane portion, and the plane portion is flush with the major surface provided with the microphone in order for the user of the portable radio device to

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channel speech signals directly into the microphone, as taught by De Casillas.

**Conclusion**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Keith T. Ferguson whose telephone number is (703) 305-4888. The examiner can normally be reached on 6:30am-5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, William Trost can be reached on (703) 308-5318. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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Keith Ferguson

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October 28, 2004

*Keith S*